

National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL
Advice Memorandum

DATE: December 11, 1996

TO: Peter W. Hirsch, Regional Director, Region 4

FROM: Robert E. Allen, Associate General Counsel, Division of Advice

SUBJECT: Teamsters Local 115, Joint Counsel No. 53, (First District Office of Senator Vincent Fumo), Case 4-CC-2140

560-2550-8333, 560-2575-6767, 560-7540-4020-2500, 560-7540-4020-7500, 560-7540-8060-0120

This Section 8(b)(4)(i)(ii)(B) case was submitted for Advice on the issue whether Teamsters Local 115 and Teamsters Joint Council 53 have violated the Act by picketing and threatening to picket two offices of Pennsylvania State Senator

This Section 8(b)(4)(i)(ii)(B) case was submitted for Advice on the issue whether Teamsters Local 115 and Teamsters Joint Council 53 violated the Act by picketing and threatening to picket two offices of a Pennsylvania state senator, Vincent Fumo, one leased from Pennsylvania Savings Bank, with an object of forcing Pennsylvania Savings Bank and Fumo's political action committee to cease doing business with a campaign organization supporting a slate of candidates in an internal Teamsters election.

FACTS

The Charging Party, Hoffa 96, is a campaign organization established to support the candidacy of James Hoffa, Jr. for Teamsters International president against incumbent Ron Carey. Carey is running for reelection on a slate that includes an incumbent Teamsters International vice-president, John Morris. Morris also heads Teamsters Local 115 and Teamsters Joint Council 53.

Senator Vincent Fumo has district offices in Philadelphia, on both Tasker and Clearfield Streets. Senator Fumo leases his Tasker Street office from the Pennsylvania Savings Bank ("PSB"). The "Fumo for Senate" political action committee leases a telephone bank from PSB in a room in the Tasker Street building.

Hoffa 96, James Hoffa, Jr.'s campaign organization, entered into an arrangement with the Fumo for Senate PAC to use the Tasker Street telephone bank during the months of October and November, from 5 PM to 10 PM each night. Under that agreement, Hoffa 96 would pay its own phone bills. Hoffa 96 and PSB also agreed that Hoffa 96 would rent the room containing the telephone bank during the same two months of October and November for a fee of \$50. The parties reduced the arrangements to writing on November 4.

The "Fumo for Senate" group has not previously rented its phones nor has PSB rented its space to parties other than Hoffa 96. Further, the fees charged approximate the fair market value of the services and space.

Beginning on November 12, during each weekday, groups of between four and ten pickets patrolled outside the Fumo offices on Tasker and Clearfield streets carrying signs that said: "Fumo and Jr. Perfect Together," and "Dial F-U-M-O for Mob." The Hoffa 96 campaign group only works out of the Tasker Street site, and only works at night, when the pickets are not present. Most of the pickets have worn Teamsters Local 115 jackets.

Teamsters Local 115 has maintained that the pickets are not union representatives, but are picketing as Carey and Morris supporters.

Hoffa 96 has obtained a temporary injunction in state court against Local 115 and the Joint Council that limits the number of pickets and prohibits any restraint of access. It is not known what evidence was presented, if any, to justify a TRO against

Local 115 and the Joint Council.

ACTION

We conclude that the charge should be dismissed, absent withdrawal, for the reasons set forth below.

Section 8(b)(4)(i) and (ii)(B) makes it unlawful for a labor organization or its agents (1) to induce or encourage any individual employed by any person to withhold services from their employer, or (2) to threaten, coerce, or restrain any person where an object is for that person to cease doing business with another employer. This provision reflects the "dual congressional objectives of preserving the right of labor organizations to bring pressure to bear on offending employers in primary labor disputes and of shielding unoffending employers and others from pressure in controversies not their own." *NLRB v. Denver Bldg. & Constr. Trades Council*, 341 U.S. 675, 692 (1951).

1. The pickets are not agents of the Union.

As a preliminary matter, the Region has determined that there is no evidence that the pickets are agents of Local 115 or Joint Council 53. As Local 115 contends, the evidence indicates that the pickets are merely independent supporters of the Carey and Morris campaigns, and are not acting on the authority of the Union. In these circumstances, the Region has concluded that it will dismiss the charge on the basis that the pickets do not constitute a labor organization, and thus do not fall within the ambit of Section 8(b)(4).

2. It is unclear whether Senator Fumo, Fumo PAC, or PSB are neutrals.

In addition to the lack of agency conclusion, we note that it is not clear from the evidence presented whether Senator Fumo, Fumo PAC, and/or PSB are neutrals. ⁽¹⁾ If there is daily involvement by the alleged neutrals in a primary's operations, including common ownership, common management, interrelationship of operations, and common control of labor relations, resulting in an identity and community of interests, any neutral status may be negated. ⁽²⁾

In the instant case, there is no evidence as to how or when the relationship between Fumo and Hoffa 96 and/or PSB and Hoffa 96 arose or what the relationship between them is. We note that Fumo has never sold or leased the telephone banks to groups other than Hoffa 96, and Fumo is not in the business of lending or leasing his telephone bank to others. Further, although not dispositive, ⁽³⁾ there are insufficient facts to conclude at this time that the transaction was at arm's length. [*FOIA Exemption 5*].

Based upon the foregoing, we conclude that the Union has not violated Section 8(b)(4)(i)(ii)(B) of the Act, and that the instant charge should be dismissed, absent withdrawal.

B.J.K.

¹ If they are not neutrals, even if the Union, as opposed to independent individuals, picketed their offices, the picket line could not constitute unlawful secondary activity.

² See *Mine Workers (Boich Mining Co.)*, 301 NLRB 872, 875 (1987) (common ownership, common products, interrelationship of operations show single-employer, nonneutral status); *Teamsters Local 560 (Curtin Matheson)*, 248 NLRB 1212, 1213-1214 (1980) (Board weighs a variety of factors to determine whether an employer is involved in another's labor disputes and loses neutrality).

³ See *Mine Workers (Boich Mining Co.)*, 301 NLRB at 874.